



U.S. Department
of Transportation
**Federal Highway
Administration**

Virginia Division

May 26, 2021

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Suite 750
Richmond, VA 23219
804-775-3320
Fax: 804-775-3356
Virginia.FHWA@dot.gov

FOIA Control Number:
2021-0111
In Reply Refer To:
HDA-VA

Morgan Butler
Southern Environmental Law Center
201 West Main Street, Suite 14
Charlottesville, VA 22902

Dear Mr. Butler:

This letter is an interim response to your Freedom of Information Act (FOIA) request, dated February 11, 2021, FOIA Control Number 2021-0111. In your request, you sought "any and all correspondence (including letters and emails) in the possession of the Federal Highway Administration that was created since January 1, 2019 and conveys comments of a federal, state, or local governmental body or official for consideration as part of the National Environmental Policy Act (NEPA) review or the Section 404 Clean Water Act review of the Nimmo Parkway Phase VII-B proposal in the City of Virginia Beach." We conducted a search for responsive records in our control as of February 11, 2021.

In accordance with the FOIA, 5 U.S.C. § 552, we have enclosed the first set of records, with the exception of records that contain information exempt from FOIA's mandate of disclosure. One (1) document is being released to you in full. Two (2) documents are being released in part with portions of these records withheld pursuant to 5 U.S.C. §§ 552(b)(5), and (b)(6). Additionally, five (5) records are being withheld pursuant to Exemptions 5. The records represent predecisional opinions and deliberative process communications and are therefore exempt from disclosure by Exemption 5. More specifically, the documents being withheld contain preliminary versions of the Environmental Assessment (EA) being developed for the project and comments and communication regarding those preliminary versions. The records are predecisional because the EA has not yet been finalized. Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." See 5 U.S.C. § 552(b)(5) and 49 C.F.R. § 7.23(c)(5). Exemption 6 protects personally identifiable information (PII) such as cell phone numbers, the disclosure of which would constitute an invasion of personal privacy. See 5 U.S.C. § 552(b)(6) and 49 C.F.R. § 7.23(c)(6).

While processing this request, we located two records that originated in a Federal office outside of the Department of Transportation. We are referring the material and a copy of the request to the relevant office for a direct response to you. The referred records are two emails from the U.S. Environmental Protection Agency.

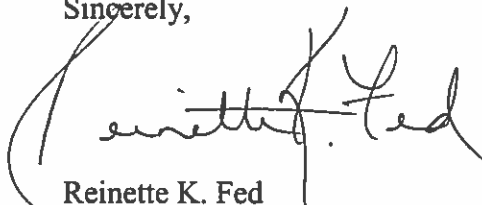
One additional record responsive to your request contains material originating in two other agencies. The record has been sent to those agencies for consultation, and a determination on its disclosure will be made after the consultation is complete. A response regarding that remaining record will be sent from the FHWA Virginia Division Office shortly after that consultation has concluded.

Please be advised that you are not being assessed fees for the search, review, and duplication of the records released to you.

This letter is a partial response to your FOIA request. Please be assured that we will continue to work on the response to your FOIA request. As this is an interim response, we refrain from providing appeal rights at this time. Appeal rights will be provided with the final response.

If you have any questions, please contact Reinette Fed, our division office's FOIA Liaison, at (804) 775-3334 or reinette.fed@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reinette K. Fed". The signature is fluid and cursive, with a large initial "R" and "F".

Reinette K. Fed
FOIA Representative
FHWA Virginia Division

Enclosure